

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|--------------|-----------------------------|-------------|----------------|
| Applicant : | Christopher P. Bergh et al. | Art Unit : | 3622 |
| Serial No. : | 09/777,614 | Examiner : | Raquel Alvarez |
| Filed : | February 5, 2001 | Conf. No. : | 6722 |
| Title : | OFFER DELIVERY SYSTEM | | |

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. §41.41, Applicant responds to the Examiner's Answer as follows, maintaining the same identifiers for the Grounds of Rejection, as used in Appellant's Appeal Brief.

Throughout the Examiner's Answer, the examiner quotes, paraphrases and excerpts from Appellant's Brief. Appellant does not concede that these quotes or paraphrases are representative of Appellant's arguments contained in the Appeal Brief.

**Claims 17-29, 31-38 and 44-46, 48-50 are patentable over
Benthin in view of Langseth.**

Claims 17, 31 and 33

The Examiner answers that:

Examiner response to argument 1: The Examiner disagrees with Appellant because Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel. Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. Benthin teaches a plurality of marketing campaign. The delivery of the offers being based on individual characteristics and event based rules. Since

CERTIFICATE OF MAILING BY EFS-WEB FILING
I hereby certify that this paper was filed with the Patent and
Trademark Office using the EFS-WEB system on this date:
October 14, 2011

"time based rules" is broader than "clock based rules". Time based could be related to event based rules and is taught by Bethin. Therefore the combination of Langseth and Bethin teach delivering the offers to specific, targeted individuals ... and time of delivery ... based on execution of offer data processing rules and the allocation of the offers (Bethin) to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels" (Langseth).

Claim 33 requires instructions to: "... select the offers to send for each of the plurality of marketing campaigns according to a determined channel allocation of offers ..." and "cause a delivery of the offers over channels ... with the channels and time of delivery of the offers based on ... the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels." Bethin does not deal with any allocation scheme of offers to send from plural marketing campaigns contrary to the examiner's characterization.

Claim 33 also requires "the channels being ... different types of delivery channels" and specifically, "cause a delivery of the offers over channels ... with the channels and time of delivery of the offers based on ... the determined allocations in each of the marketing campaigns."

Bethin does not teach different types of delivery channels. Langseth likewise does not teach different types of delivery channels. In the Appeal Brief, Appellant pointed out that Langseth neither described nor rendered obvious the feature requiring different types of delivery channels, but rather Langseth used the term "channel" to refer to the content of a broadcast stream of information over the web.¹ Langseth merely teaches only one delivery mechanism, the web. In contrast, as required by Appellant's claim 33, "channels" or more precisely "delivery channels" refer to the medium over which offers are communicated to the targeted individuals, such as by instructions to "cause a delivery of the offers over channels ... with ... channels being one of a plurality of different types of delivery channels," which is consistent with Appellant's specific definition of channels.²

¹ See Appeal Brief p. 12.

² See Appellant's specification:

In Answer, the examiner has not addressed any argument to Appellant's contentions regarding allocation of offers from plural marketing campaigns or different types of delivery channels. The examiner has made no effort to either consult Appellant's specification to properly construe the terms used in the claimed instructions or address Appellant's arguments regarding the examiner's improper characterization of these terms.

Claims 18, 23-24 and 34

Claim 34 requires instructions to: "... determine a channel to select based at least in part on a user's response to an offer." Appellant challenged application of the Official Notice taken by the examiner as being inadequate because it was not directed to the subject matter claimed. The examiner had not shown how **"The Official Notice taken pertains to sending the ads to the users and measuring how the user's respond to ads in order to determine if the channel in which the ad was delivered was effective"** as stated by the examiner measured a user's response to an offer, keeping in mind the channel mechanisms taught by the alleged combination of Benthin and Langseth. Such instructions are not suggested much less described by the purported official notice in any combination with the cited references.

Claims 19 and 35

Claim 35 requires instructions to: "prioritize the set of offers for the targeted individual ... and limit the number of prioritized offers using at least one privacy characteristic defined by the specific, targeted individual" The examiner relied on Benthin [0024] for this feature,³ stating:

[0026] Offer management system 100 supports delivery of offers to customers 110 through a wide variety of channels 140. In the discussion below, a number of these channels are specifically identified, but it should be understood that the invention is applicable to many more types of channels, some of which may not yet be commonly used. The channels include both traditional channels, such as direct postal mailings and solicitations by sales agents, as well as electronic channels, such as email and Web delivery, and could include channels such as personalized location-based delivery of advertising to handheld devices. In general, offers can be delivered to any particular customer 110 through multiple of these channels. The offer management system provide a basis of controlling the potential flood of offers any one customer might receive.

³ Apparently the examiner now cites to this teaching for the first time regarding the privacy feature of claim 35.

Response to argument #3: The Examiner disagrees with Appellant because Benthin on paragraph 0024 teaches using privacy characteristics such as the user's profile to limit the offers types based on the user's profile.

Benthin [0024] is reproduced below:

[0024] FIG. 2A is a flow chart of the steps carried out by the customer when using the system of the present invention. The customer first logs in **30** the system. A campaign is then determined **32** to be presented to the customer. A first segment of a dialog is selected **34** according to the campaign chosen. The segment is customized using the customer's preferences **36** to be presented on the customer's interface. The segment is then presented **38**. If the prompt contained in the segment is attractive, the customer will probably perform an action such as clicking on a link. This action will be recorded and analyzed **40**. The user's action generates a system event, which may cause further system responses. This will determine the next segment of the dialog to present **42**. Again, the segment will first be customized **44** and then presented **46**. This process will continue until the dialog is over.

Nothing in [0024] describes a privacy characteristic, much less that this privacy characteristic can be used to limit the number offers for the targeted individual.

Claims 20 and 36

Claim 36 requires instructions to: "allocate the selected prioritized offers according to a capacity associated with each of the channels." The examiner replied that:

Response to argument # 4: The Examiner wants to point out that the offers are prioritized according to the capacity of the channels. For example, in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. For example, a golf site may only enable access to a sports channel. Therefore contrary to Appellant's arguments, Langseth teaches allocating the selected prioritized offers according to a capacity associated with each of the channels ;

Langseth has a different concept of "channel." In Langseth, an "advertisement" i.e., content is the "channel." Langseth does not use the term "channel" as the delivery mechanism and clearly therefore does not teach different types of delivery channels. Langseth likewise does not teach different types of delivery channels. Similarly, Langseth does not teach "channel capacity" and therefore does not suggest instructions to allocate prioritized offers [from plural marketing campaigns]⁴ according to a capacity associated with each of the channels.

Claims 21, 22, 37 and 38

Claims 37 and 38 are each representative of these groups of claims. Claim 37 defines channel capacity, as related to monetary costs associated with the channels, whereas, Claim 38 defines channel capacity, as related to a physical capacity of the channels.

The examiner's official notice is clearly irrelevant to the claimed subject matter for reasons given in the Appeal Brief, which reasons were not refuted by the examiner.

Claims 28, 29, 32, 45 and 46

Claim 45 requires the feature of instructions to: "track activities of the targeted individuals to whom the offers were targeted ..." and instructions to: "determine an effectiveness of the ... offers by matching information received from sources of activity related information to the offers," whereas Claim 46 requires instructions to: "present through channels selected from the plurality of channels a sequence of subsequent offers ... based on ... tracked activities."

⁴ From the base claims.

Response to argument # 6: The Examiner disagrees with Appellant because Benthin teaches tracking the activities of the targeted individuals and Langseth teaches delivering offers via a plurality of channels. Therefore it would have been obvious to include the teachings of Langseth which teaches delivering through a plurality of channels into the teachings of Benthin which teaches tracking effectiveness of the offers in order to determine which medium/channel is most favorable to the individual.

The examiner neither addressed any new argument nor cited to any new passages from either Benthin or Langseth nor addressed any of Appellant's arguments regarding why neither of these features were obvious in view of the alleged combination of references.

The combination of Benthin, Langseth and official notice does not teach the instructions that involve Appellant's specific concept of "channels" as that term is used by Appellant, as a delivery medium for offers. Therefore, the alleged combination of references neither describes nor would render obvious instructions to track activities according to the channels over which the offers were sent," as in claim 45 or instructions to "present subsequent offers based on tracked activity," as in claim 46.

Claims 48-50

Claim 50 requires that "... at least one of the offer data processing rules is a rule selected from a set of time based rules, and further requires that instructions to select ... select one of the offers based on execution of one of the time based rules."

The examiner stated:

Response to argument# 7: The Examiner first of all wants to point out that "time based rules" is broader than "clock based rules". Time based could be related to event based rules. Benthin clearly teaches different times to present the offers such as certain offers are presented right away, equivalent to Applicant's direct rule (i.e. specify the content to be automatically present the customer on paragraph 0031), other offers are presented based on the timing of certain conditions, such as the user clicking on certain ads, equivalent to Applicant's triggered rule (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers, equivalent to Appellant's staged rule (i.e. offers based on customer's profile, paragraph 0024). Therefore contrary to Appellant's arguments Benthin teaches time based rule that instates offers, for example either in the form of a direct rule, a triggered rule or a staged rule.

Again, the examiner relies upon the ambiguous and irrelevant concept of: **"time based rules" is broader than "clock based rules". Time based could be related to event based rules.**" without any explanation of what that statement actually means or how that statement relates to the claimed subject matter.

Nevertheless, the examiner's arguments and the references clearly fail to address that the claimed feature requires: "time based rules" as an offer data processing rule. In [0024], Benthin describes "steps carried out by the customer when using the system..." Notwithstanding that those steps do not resemble any of the exemplary rules Benthin's teachings are with respect to "user selection." Clearly, one of ordinary skill would not construe Benthin as teaching: "... offer data processing rules that are part of a set of time based rules."

The post-offer, user selection activities in Benthin do not resemble any of the specific rules that are involved in campaign design activities, i.e., offer data processing rules, as required by claim 50.

For these reasons, and the reasons stated in the Appeal Brief, Applicant submits that the final rejection should be reversed.

Applicant : Christopher P. Bergh et al.
Serial No. : 09/777,614
Filed : February 5, 2001
Page : 8

Attorney's Docket No. 10235-0048001

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: October 14, 2011

/Denis G. Maloney/
Denis G. Maloney
Reg. No. 29,670

Customer Number 26161
Fish & Richardson P.C.
Telephone: (617) 542-5070
Facsimile: (877) 769-7945

22711980.doc